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IN THE

Supreme Court of the United States

No. 517

GEORGE G. HUNTER, JR.,

Petitioner,

—v.—

FRANCIS S. TALBOT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

GEORGE G. HUNTER, JR.
Petitioner Pro Se
51 Broadway
New York, New York 10004

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POINT I

Respondent does not answer petitioner's statement that he has been denied due process and a jury trial.

Petitioner has made the very clear point that the Court of Appeals denied him due process and a jury trial, each in violation of his constitutional rights. That was done by making a finding of fact that respondent did not act maliciously when the record was clear that (1) the District Court had expressly precluded petitioner from offering his evidence of such malice and (2) petitioner had duly demanded a jury trial.

That is a pretty powerful reason for this Court to exercise its power of supervision. If respondent had an answer to it, it would be forthcoming. Instead the only statement

in the memorandum in behalf of respondent which even remotely bears on it is:

> "* * * The court of appeals affirmed on the ground that the complaint clearly alleged no harassment sufficient to state a cause of action. * * *" (Memo. p. 2.)*

That statement is most inaccurate. The Court of Appeals did not affirm on the ground that the complaint did not allege a cause of action. The Court of Appeals used very clear language:

> "* * * If defendant was bent on 'harassing and injuring' plaintiff he would not by any reasonable stretch of the imagination * * *" (Appendix B, pp. 10a-11a).

The Court made a finding of a fact and there is no mistake about it.

It is manifest that petitioner has been denied due process and he has been denied a jury trial. Although respondent cannot be expected to expressly admit it, certainly there is no real denial. Only this Court now can enforce these basic rights.

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* It is assumed that the writer did not mean that a little harassment is all right.

POINT II

Respondent attempts to dispose of the case by assuming the facts in controversy.

The only argument made in behalf of respondent is that he is not guilty of Willful Oppression. That argument is:

> " * * * Under the facts as alleged in the complaint and the affidavits, it is quite clear that respondent was not guilty of 'willful oppression' within the meaning of this statute. He merely attempted to collect overdue taxes which the petitioner admittedly owed; upon orders of his supervisor, respondent served two notices on petitioner (when §6331 of the Code requires only one) and finally levied on a $29 bank account. * * * " (Memo. p. 3.)

That assumes the very facts in issue upon which petitioner is entitled to submit his proof. He has been precluded from doing that.

POINT III

Respondent makes damaging admissions.

The memorandum in behalf of respondent states that the District Court dismissed the complaint "on the ground of *executive privilege*" (Memo. p. 2; italics supplied). That, of course, is precisely the point. *Barr* v. *Matteo,* 360 U. S. 564, applies to *executives.* It protects executives in the exercise of their discretion. Respondent is not an executive.

The memorandum concedes that a revenue agent who violates §7214 (Willful Oppression) is civilly liable. More particularly, that memorandum states:

> "Petitioner relies on §7214 of the Internal Revenue Code of 1954 which makes 'extortion or willful oppression under color of law' by any revenue agent a crime and *gives the party injured a civil cause of action.* * * * " (Memo. p. 3; italics supplied.)

That is something else that petitioner has been contending right along. Of course it is so. But the District Court brushed it aside as circular reasoning (R. 1, p. 6a).

Summary

Not only has petitioner been denied due process and a jury trial, but the Court of Appeals has left untouched a decision which stands for this proposition: Thousands of minor Federal employees have absolute civil immunity even though in a given case the employee (1) would have no right to exercise any discretion; (2) would hold no executive position; (3) would receive a direction to act by means of his own deliberately false report to his supervisor; (4) would have that fraudulently obtained authority revoked before he used it; and (5) would violate criminal provisions of the very statute under which he operated. *Barr* v. *Matteo, supra,* never contemplated that.

CONCLUSION

This writ of certiorari should be granted.

Respectfully submitted,

GEORGE G. HUNTER, JR.
Petitioner Pro Se